

Notice of Allowability	Application No.	Applicant(s)	
	10/708,721	BIRKMEYER ET AL.	
	Examiner	Art Unit	
	JAMES L. SWIGER III	3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to interview summary paper number 20090127.
2. ☒ The allowed claim(s) is/are 14-29.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>7/10/2006</u> 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>20090127</u>. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____. |
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/JAMES L SWIGER/
Examiner, Art Unit 3775

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733

EXAMINER'S AMENDMENT

An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on 1/27/2009, Lisa Adams requested an extension of time for 2 MONTH(S) and authorized the Director to charge Deposit Account No. 141-449 the required fee of \$490.00 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Please replace claim 14 with the following:

14. (Currently Amended) A method for implanting a spinal fixation element into at least one spinal anchor disposed within a vertebra in a patient's spinal column, comprising:

introducing a spinal fixation element having a feature formed adjacent to a terminal end thereof through a lumen in an access device coupled to a spinal anchor, the access device including a slot formed in a sidewall adjacent to a distal end thereof and adapted to prevent the feature from passing through any portion of the slot; and manipulating the spinal fixation element to cause the feature to sit within a receiving member of the spinal anchor coupled to the access device, and to cause a remaining portion of the spinal fixation element to extend through the slot.

Deleted: thereof

Please replace claim 21 with the following:

21. (Currently Amended) The method of claim 20, wherein the pusher member is slidably disposed within the slot formed in the sidewall of the access device such that it

Deleted: at least one opening

is effective to cause a portion of the spinal fixation element to extend through the slot ~~formed~~ in the sidewall.

Deleted: at least one opening

Please replace claim 27 with the following:

27. (Currently Amended) A method for implanting a spinal fixation element, comprising:

providing at least two spinal anchors implanted in adjacent vertebrae of a patient's spine;

providing an access device having an inner lumen extending between proximal and distal ends, the distal end being coupled to one of the spinal anchors, the access device further including a slot formed in a sidewall thereof adjacent to the distal end;

Deleted: adapted to

providing a spinal fixation element having a first end and a second end with a feature formed thereon, the feature having a width that is greater than a maximum width of the slot to prevent passage thereof through the slot in the sidewall of the access device;

inserting the spinal fixation element through the lumen in the access device; and

manipulating the spinal fixation element to cause the feature to be positioned within the spinal anchor coupled to the access device and the first end to extend through the slot, such that the spinal fixation element extends between the spinal anchors.

Deleted: attached

The following is an examiner's statement of reasons for allowance:

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest, a method for implanting a spine fixation element comprising the steps of introducing a spinal fixation element through an access device that is coupled

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to spinal anchor, and wherein the access device has a slot formed in the sidewall, and wherein the spinal fixation element has a feature that is prevented from passing through any portion of the slot in the sidewall and wherein the spinal fixation element is manipulated such that a remaining portion of the spinal fixation element extends through the slot, while the feature is configured to remain within the lumen of the access device.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES L. SWIGER III whose telephone number is (571)272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES L SWIGER/
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